City of Auburn v. Hedlund

No. 80110-0

MADSEN, J. (dissenting)—The majority recognizes that its broad reading of RCW 9A.08.020(5) leads to "strange results." Majority at 8. I would go further: the majority's reading of the statute leads to absurd and untenable results. I respectfully dissent.

Discussion

The majority holds that Teresa Hedlund is a "victim" of driving under the influence (DUI), and therefore RCW 9A.08.020(5) precludes her prosecution as an accomplice to that crime. The majority recognizes that it gives RCW 9A.08.020(5) its broadest possible reading but it insists that its reading is necessary because the statute is "plainly written." Majority at 8. While I agree the statute is "plainly written," I disagree with the majority's reading.

Despite the majority's contention that RCW 9A.08.020(5) is "plainly written," the majority construes the statute because it says that the term "victim" in the statute is not defined in the criminal code or the motor vehicle statutes. Thus, the majority relies on the dictionary definition of "victim" and the understanding

of "victim" embodied in the crime victims' compensation act (chapter 7.68 RCW) to conclude that "victim" is a broadly inclusive term and includes Ms. Hedlund.

The majority wanders unnecessarily from the criminal statutes. Instead of reaching for a definition of "victim" outside the criminal and motor vehicle codes, I would hold that RCW 9A.08.020(5) applies only when the elements of the charged offense includes injury to a person or a person's property. In other words, when the statute includes a victim as an element of the crime, it is appropriate to relieve that victim from culpability as an accomplice. Therefore, I would look no further than the definition of the crime charged to determine the meaning of victim. Because DUI does not include an element of injury to persons or property, I would hold that RCW 9A.08.020(5) does not preclude the prosecution of Ms. Hedlund as an accomplice in this case.

In attempting to show that it is adhering to RCW 9A.08.020(5) and that my reading is incorrect, the majority declares that use of the word "'a'" in the statute ("*a* victim of that crime" (emphasis added)) shows that the statute should be given broad application. Majority at 8 n.4. The legislature did not use the word "a" so that the statute would be applied to achieve indefensible results. Instead, it did so simply because some crimes have a single victim while others have multiple victims. "A" is grammatically proper when there are multiple victims and reference is being made to one of them.

Not only does the majority go too far, and too far afield in its attempt to

give meaning to the term "victim," it unfortunately chooses a definition from the crime victims' compensation act that actually disfavors the majority's all-expansive definition for purposes of RCW 9A.08.020(5). Under the crime victims' compensation act, no benefits from the crime victims' compensation fund can be awarded if the crime victim's injuries were "[s]ustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony." RCW 7.68.070(3)(b). The crime victims' compensation act thus expressly contemplates the situation where a "victim" as defined by the act is also charged with committing a crime either as a principal or an accomplice and because of that criminal activity will not receive the benefits provided by the act.

It simply makes no sense to import the definition of the word "victim" from the crime victims' compensation act to expansively include in RCW 9A.08.020(5), and therefore exempt from criminal liability, anyone who is, in the broadest sense, a victim, when that act itself precludes favorable treatment of one injured while committing a crime despite defining that individual as a "victim."

The majority's importation of the term "victim" in the act to define "victim" in RCW 9A.08.020(5) is also contrary to the legislature's intent in enacting the crime victims' compensation act. Under the majority's analysis, an individual injured while committing a crime as an accomplice cannot be charged as an accomplice because he is a "victim" of the crime. It follows that the "victim" who sustained the injuries during the commission of a crime will be entitled to receive

benefits under the act because, as a victim, he is free of criminal liability. But this is completely contrary to the legislature's intent to deny compensation for such persons. The fact he is a "victim" should not and does not shield him from his conduct under the crime victims' compensation act.

The majority recognizes that its construction will result in "strange" results. In fact, the majority gives its own examples.[1] Majority at 8. But, the majority says the legislature must have intended absurd results and this court should not "rewrite such a plainly written statute." *Id*. I disagree. It is a well-settled principle that "[i]n undertaking a plain language analysis, . . . [a]bsurd results should be avoided because "'it will not be presumed that the legislature intended absurd results.'"" *Densley v. Dep't of Ret. Sys*., 162 Wn.2d 210, 233, 173 P.3d 885 (2007) (citations omitted) (quoting *State v. J.P*., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003)); *accord Tingey v. Haisch*, 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007) ("the court 'will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences'"; "[a] reading that produces absurd results must be avoided because "'it will not be presumed that the legislature intended absurd

[1] Although the majority lists examples, it fails to acknowledge the enormous impact of its decision. The getaway driver wounded in a robbery; the accomplice who is injured by the true victim defending himself against an assault; the accomplice injured by his crime partners in a dispute over "loot"—just a few examples of those who will escape prosecution because they are "victims" of the crime.

results"'" (citations omitted)). I believe the legislature assumed that this court would apply the well-accepted rules of statutory construction to its construction of RCW 9A.08.020(5), including the bedrock rule that "statutes should be construed to effect their purpose and *unlikely, absurd or strained consequences should be avoided*." *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990) (emphasis added). That is the rule I would apply.

Finally, the majority takes some pains to review the origins of the rule now codified in RCW 9A.08.020(5). However, the history actually supports the city's argument that "victim" should be defined by the elements of the charged crime. As the majority notes, the statute has its roots in a statutory rape case where the court reasoned that a law intended to protect young girls could not also hold them responsible as accomplices. *The Queen v. Tyrrell*, 1 Q.B. 710, 711-12 (1894). Similarly, the rule was first applied in the United States in *Gebardi v. United States*, 287 U.S. 112, 53 S. Ct. 35, 77 L. Ed. 206 (1932), where the court held a prostitute could not be an accomplice to the crime of transporting herself across state lines. *Id.* at 118-23. In each of these applications of the rule, the crime charged involved a victim in its elements. The courts in these cases were not faced with and did not have to consider whether the rule should apply if the elements of the charged crime did not identify a victim of the crime. The same is true of a more modern application of the rule in cases involving victims of criminal abortions and battered women who invite their abusers to violate protection orders.

In re Pet. of Vickers, 371 Mich. 114, 116-17, 123 N.W.2d 253 (1963); *City of North Olmsted v. Bullington*, 139 Ohio App. 3d 565, 571, 744 N.E.2d 1225 (2000).

A forthright application of the rules of statutory construction, the historical underpinnings of RCW 9A.08.020(5), and common sense lead me to conclude that Ms. Hedlund was properly tried as an accomplice to the crime of DUI.

AUTHOR:
Justice Barbara A. Madsen

WE CONCUR:
Chief Justice Gerry L. Alexander

Justice Charles W. Johnson

Justice James M. Johnson